

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EMMANUEL G. JUSTINIANO, et al.,

Plaintiffs,

-against-

PHOENIX BEVERAGES, INC. et al.,

Defendants.

No. 13 Civ. 2332 (LTS) (JLC)

ORDER

A motion to dismiss the complaint, treated as a pre-discovery motion for summary judgment (see docket entry no. 39), is pending before the Court. Plaintiffs have filed affidavits but also assert that they cannot respond to certain of Defendants' factual assertions without discovery obtained pursuant to Rule 56(d) of the Federal Rules of Civil Procedure.

The undisputed record demonstrates that Defendants' activities are sufficient to constitute the requisite interstate commerce for the Motor Carrier Exception, 29 U.S.C § 213(b)(1), to apply. Bilyou v. Dutchess Beer Distributors, Inc., 300 F.3d 217 (2d Cir. 2002). However, there are materially disputed factual issues regarding (1) the weight of the vehicles Plaintiffs drove and (2) the sufficiency under New York Labor Law of the wages that Plaintiffs were paid. These are matters that warrant and necessitate discovery. The Court finds that discovery with regard to these issues is appropriate and within the scope of Rule 26 of the Federal Rules of Civil Procedure. Defendants' Motion for Summary Judgment is therefore denied without prejudice to later renewal. Defendants' pending motion for sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure is also denied without prejudice.

The initial pretrial conference is hereby rescheduled from January 17, 2014 to

November 22, 2013 at 10:30 a.m. The parties are directed to confer and make a joint submission as provided for in the Initial Conference Order (docket entry no. 6).

This Order resolves docket entry numbers 11 and 21.

SO ORDERED.

Dated: New York, New York
October 17, 2013

/S
LAURA TAYLOR SWAIN
United States District Judge